given by article 77 without having recourse to some contract between the defendant company and the plaintiff company conferring on the former a right to appoint a director of the latter. As regards the suggestion that the court has no power to rectify article 77, it must be said that the plaintiff company is not asking the court to rectify the article.

Counsel for the defendant company supports the decision of the learned trial judge as regards the fourth point, namely, that clause 14 of the lease confers no right in contract on the plaintiff company. Counsel's submission on this point proceeds as follows. Clause 14 contains a covenant on the part of the lessees not to assign without the previous licence in writing of the lessors. The phrase "such licence not to be unreasonably withheld" does not amount to a covenant on the part of the lessors but is merely a qualification of the lessees' covenant: *Treloar* v. *Biggs*.[8] The words in the proviso cannot create a new obligation and can only qualify the main part of clause 14. I accept this submission. And I take the view that the learned trial judge was right in deciding that clause 14 of the lease confers no contractual right on the plaintiff company.

For the above reasons I come to the conclusion that article 77 of the plaintiff's articles of association is not binding on the plaintiff company as between the plaintiff company and an outsider; that without having recourse to a contractual right the defendant company, being an outsider, cannot take advantage of a power purporting to be given by article 77; and that the defendant company's appointment of itself as a director of the plaintiff company in exercise of the power purporting to be given to it by article 77 is invalid, that is, has no legal effect. In the result, I would dismiss this appeal with costs.

Tan Ah Tah Ag.C.J.: I agree.

Chua J.: I agree.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Allen & Gledhill.*

TAN CHENG WEE v. NG HYE KOK

[A.C.J. (Buttrose J.) December 24, 1965]

[Singapore — District Court Appeal No. 20 of 1965]

Landlord and Tenant — Recovery of possession — Agreement to vacate — Whether amounts to notice to quit given by tenant — Control of Rent Ordinance (Cap. 242), s. 15(1)(f).

Landlord and Tenant — Protection of Control of Rent Ordinance — Whether tenant can contract to give up his right to claim — "Agreement" — Notice.

The plaintiff (respondent in this appeal) brought an action to recover possession of premises on the strength of an agreement to vacate signed by the defendant (appellant in this appeal). In consideration of the agreement the plaintiff paid $300 to the defendant. In the court below the learned district judge gave judgment for the plaintiff. On appeal the issue argued was as to whether the district judge was entitled to make the order for the recovery of possession.

Held: (1) a notice to quit and an agreement to surrender or determine a tenancy are essentially different in their nature. An agreement is the result of the consent of the parties whereas a notice to quit is altogether different. The essence of a notice to quit by the tenant is to determine the tenancy whether the landlord likes it or not;

(2) in this case the agreement in question did not amount to a notice to quit given by the tenant, therefore the plaintiff was not entitled to an order for the recovery of possession of the premises;

(3) a tenant cannot contract to give up his right to claim the protection of the Control of Rent Ordinance.

Cases referred to:—

(1) *De Vries* v. *Sparks* (1927), 137 L.T.R. 441.

(2) *Rajbenbach* v. *Mamon* [1955] 1 All E.R. 12.

(3) *Barton* v. *Fincham* [1921] 2 K.B. 291.

(4) *Brown* v. *Draper* [1944] 1 All E.R. 246.

DISTRICT COURT APPEAL.

N. A. Christopher for the appellant/defendant.

R. E. Redrup for the respondent/plaintiff.

Cur. Adv. Vult.

Buttrose J.: This is an action to recover possession of demised premises. The premises in question are to the right and rear of the ground floor of No. 19 Paya Lebar Road and were let by the plaintiff to the defendant at a monthly rental of $4.

It was not in dispute that the premises in question were "premises" within the meaning of the Control of Rent Ordinance (Cap. 242).

The plaintiff's case was that by a document in writing dated the 1st September, 1963 the defendant agreed to vacate the premises within three months from the date thereof and was paid $300 by the plaintiff, receipt of which sum the plaintiff alleged was acknowledged by the defendant.

The plaintiff's contention was that the defendant had thereby terminated the tenancy with effect from the 30th December, 1963. The defendant refused to vacate on that date and still remains in occupation of the premises. He denied signing any agreement to vacate or receiving the sum of $300.

The agreement to vacate is in the following terms:—

"Being compelled by circumstances, I, Wee Hai Kok — (the plaintiff) — hereby requests the various occupiers to move out within 3 months from today. Those who are willing please sign their names.

(1) Mr. Tan Ah Wee — (the defendant) — agrees and signs Tan Cheng Wee received cash three hundred dollars.

(2) Mr. Ko Ya agrees and signs (Signature) $300.00

(3) Mr. Tan Ah Kim agrees and signs.

(4) Mr. Peh agrees and signs.

(5) Mr. Chin Kee Hia agrees and signs.

Dated 1st day of September, 1963.

With respect from
Brother Wee Hai Kok.'

The learned district judge found as a fact that the defendant signed this document and did receive the sum of $300.

Had I been trying the case it is conceivable that I might have arrived at a different conclusion to that of the learned district judge on this aspect of the case. Be that as it may there was evidence, if accepted by him, which would justify his finding and I am not prepared to disturb it.

The substantial issue argued on the appeal was as to whether the learned district judge was entitled to make an order for the recovery of possession.

Under the Control of Rent Ordinance an order or judgment for possession shall only be made or given in certain specific instances set out in section 15 of the Ordinance.

For our purposes the relevant sub-section is section 15(1)(f), namely, "where the tenancy has been determined by notice to quit given by the tenant".

The short point for decision is whether the agreement to vacate which I have set out above is a notice to quit given by the tenant within the meaning of section 15(1)(f).

In my view it is not a notice to quit at all but merely an agreement between the parties that the tenant would give up possession some time within 3 months from the 1st September, 1963. A notice to quit and an agreement to surrender or determine a tenancy are essentially different in their nature.

An agreement is the result of the consent of the parties whereas a notice to quit is altogether different. The essence of a notice to quit by the tenant is to determine the tenancy whether the landlord likes it or not. See *De Vries* v. *Sparks*.[1]

The plaintiff therefore was not, in my view, entitled to an order for the recovery of possession of the premises.

The case of *Rajbenbach* v. *Mamon* [2] is merely authority for saying that an agreement such as the one in question is not against public policy nor vitiated by the control of rent legislation although it might not legally be possible to eject the tenant owing to the operation of the Control of Rent Ordinance.

Barton v. *Fincham* [3] merely gives effect to the limitation on the jurisdiction of the court to make an order for possession which was imposed by the rent restriction legislation.

Brown v. *Draper* [4] is authority for the proposition that the only ways in which a tenant can be deprived of the protection of the Rent Acts are by giving up possession in which case no order for recovery of possession against him is required or by having an order for recovery of possession made against him. He cannot contract to give up his right to claim protection.

For the reasons which I have stated this appeal must be allowed and the judgment of the learned district judge set aside.

The appellant must have his costs of the appeal but there will be no order as to costs in the court below.

Appeal allowed.

Solicitors: *N. A. Christopher; Osborne Jones & Redrup.*

NG SENG HUAT & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Suffian J.) December 28, 1965]

[K.L. — Federal Court Criminal Appeal No. X12 of 1965]

Internal Security — Possession of firearm and ammunition — Consorting with Indonesian armed forces — Evidence of members of Indonesian armed forces — Evidence of accomplices — Corroboration — Admissibility of statements — Internal Security Act, 1960, ss. 57(1) & 58(1).

The appellants were convicted on charges of consorting with the Indonesian armed forces and possession of firearms and ammunition. The principal grounds of appeal were (1) that the learned trial judge was wrong in holding that the finding of single dollar notes to the amount of $300 on the person of the first appellant and of $270 on the person of the second appellant constituted corroboration of the evidence of the members of the Indonesian armed forces against them; and (2) that the statements of the appellants were wrongly admitted in evidence.

Held: (1) in the circumstances the trial judge was clearly right in regarding possession of the sums of money in question as corroboration of the evidence of the Indonesian witnesses implicating each of the appellants in a material particular;

(2) there was nothing to show that the learned trial judge was wrong in coming to the conclusion that the statements were made voluntarily and after administration of the statutory caution and in any event quite apart from the statements there was ample evidence which as it was believed by the trial judge was sufficient to support the conviction of the appellants.

Case referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

FEDERAL COURT.

T. T. Rajah for the appellants.

Abdul Hamid bin Azmi (Deputy Public Prosecutor) for the respondent.